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| APPLICATION NO.                           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/723,176                                | 11/26/2003  | Pere Baleta          | 712001.1010         | 5760             |
| 24504                                     | 7590        | 03/16/2007           | EXAMINER            |                  |
| THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP |             |                      | LE, TOAN M          |                  |
| 100 GALLERIA PARKWAY, NW                  |             |                      | ART UNIT            |                  |
| STE 1750                                  |             |                      | PAPER NUMBER        |                  |
| ATLANTA, GA 30339-5948                    |             |                      | 2863                |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE    | MAIL DATE   | DELIVERY MODE        |                     |                  |
| 3 MONTHS                                  | 03/16/2007  | PAPER                |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                        |                  |
|------------------------------|------------------------|------------------|
| <b>Office Action Summary</b> | Application No.        | Applicant(s)     |
|                              | 10/723,176             | BALETA ET AL.    |
|                              | Examiner<br>Toan M. Le | Art Unit<br>2863 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 December 2006.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 and 17-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-5,7,8,17-23,27,28 and 30-32 is/are allowed.
- 6) Claim(s) 6,9-15,24-26 and 29 is/are rejected.
- 7) Claim(s) 33 and 34 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 November 2003 and 23 April 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 6 and 24-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are directed to a judicial exception; as such, pursuant to the Interim Guidelines on Patent Eligible Subject Matter (MPEP 2106), the claims must have either physical transformation and/or a useful, concrete and tangible result. Although, the claims appear useful and concrete, there does not appear to be a tangible result claimed. Merely, providing a back module with a power source; providing a front module for controlling the test unit and receiving performance information; selecting an application module adapted for monitoring the performance of one or more data links; stacking the front module, application module, and back module in sequence and electronically connecting and mechanically securing the modules together so that the stacked modules form the test unit; and providing electrical power from the power source of the back module to the application module would not appear to be sufficient to constitute a tangible result, since the outcome of the proving, selecting, stacking steps have not been used in a disclosed practical application nor made available in such a manner that its usefulness in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible.

Claim 33 is objected to as being dependent upon a rejected base claim 6, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 9-15 and 29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are directed to a judicial exception; as such, pursuant to the Interim Guidelines on Patent Eligible Subject Matter (MPEP 2106), the claims must have either physical transformation and/or a useful, concrete and tangible result. Although, the claims appear useful and concrete, there does not appear to be a tangible result claimed. Merely, positioning a front module to receive an application module; placing a first application module on the front module and electrically coupling the first application module to the front module and then latching the application module to the front module; stacking and latching one or more additional application modules to the first application module, thereby increasing the functionality of the test apparatus; securing a back module to the last application module of the stacking step; pivoting a first support arm about a point on the test apparatus, the first support arm having a slotted retainer; and moving an adjustment rod to different slots of the slotted retainer such that an orientation of the test apparatus is changed would not appear to be sufficient to constitute a tangible result, since the outcome of the positioning, placing, stacking, securing, pivoting, and moving steps have not been used in a disclosed practical application nor made available in such a manner that its usefulness in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible.

Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Allowable Subject Matter***

Claims 1-5, 7-8, 17-23, 27-28, and 30-32 are allowed.

The reason for allowance of the claims 1-5, 7-8, 17-23, 27-28, and 30-32 is the inclusion of a multi-position foot for positioning the test unit in different orientations, the multi-position foot comprising a first pivotable support arm coupled to a first bar having a slotted retainer and an adjustment rod extending into the slotted retainer, the adjustment rod movable to different slots of the slotted retainer so that the test unit is placed in a different orientation by moving the adjustment rod to a different one of the slots as in claims 1, 8, and 19; a back module having a power supply providing electrical power to the each of the application modules as in claim 7; each of the application modules having a rotatable latch that rotates to mate with a respective latch of another of the application modules as in claims 17 and 21.

The closest reference No. 6,801,307 does not disclose those limitations above.

***Response to Arguments***

Applicant's arguments with respect to claims 1-15 and 17-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan M. Le whose telephone number is (571) 272-2276. The examiner can normally be reached on Monday through Friday from 9:00 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Toan Le

March 10, 2007



John Barlow  
Supervisory Patent Examiner  
Technology Center 2800